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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 48

ANNIE E. HARPER, ET AL., APPELLANTS

v.

VIRGINIA STATE BOARD OF ELECTIONS, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINION BELOW

The *per curiam* opinion of the district court (R. 31–33) is reported at 240 F. Supp. 270.

JURISDICTION

The final order of the three-judge district court dismissing the complaints [1] was entered on November 10, 1964 (R. 34). Notice of appeal to this Court was filed on December 4, 1964 (R. 35–37) and probable jurisdiction was noted on March 8, 1965 (R. 37; 380 U.S. 930). The jurisdiction of this Court rests on 28 U.S.C. 1253.

[1] This case was consolidated in the district court with *Butts* v. *Harrison*, Civ. A. No. 3346 (E.D. Va.), appeal pending, No. 28 Misc., this Term, which involves similar issues.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment provides:

> * * * No State * * * shall * * * deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 10 of the Voting Rights Act of 1965 (79 Stat. 442–443) is printed in Appendix A, *infra*, pp. 41–42.

Section 173 of the Virginia Constitution, as amended, provides:

> The General Assembly shall levy a State capitation tax of, and not exceeding one dollar and fifty cents per annum on every resident of the State not less than twenty-one years of age, except those pensioned by this State for military services; one dollar of which shall be applied exclusively in aid of the public free schools, and the residue shall be returned and paid by the State into the treasury of the county or city in which it was collected, to be appropriated by the proper authorities to such county or city purposes as they shall respectively determine * * *.

Section 18 of the Virginia Constitution, as amended, provides:

> Every citizen of the United States, twenty-one years of age, who has been a resident of the State one year, of the county, city, or town, six months, and of the precinct in which he offers to vote, thirty days next preceding the election in which he offers to vote, has been registered, and has paid his State poll taxes * * * shall be entitled to vote for members of

> the general assembly and all officers elective by the people * * *.

Other relevant provisions of the Constitution and statutes of Virginia are set out in Appendix A, *infra*, pp. 42–46.

QUESTION PRESENTED

Whether Virginia's poll tax unreasonably burdens or otherwise infringes the constitutionally protected right to vote.

INTEREST OF THE UNITED STATES

In Section 10(b) of the Voting Rights Act of 1965 (see Appendix A, *infra*, p. 41), Congress has directed the Attorney General to institute "forthwith" appropriate proceedings in the name of the United States to declare unconstitutional the use of the poll tax to deny or abridge the right to vote in non-federal elections.[2] By this action, it has made plain its desire that this constitutional question be definitively resolved at the earliest possible opportunity. Such an occasion is presented by the instant case. Although instituted by private persons before the enactment of the Voting Rights Act, this case squarely raises the question whether payment of poll taxes may constitutionally be required as a condition of

[2] Requiring payment of poll taxes as a condition of voting in federal elections was outlawed by the Twenty-fourth Amendment, which provides (§ 1) that "[t]he right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax." See *Harman* v. *Forssenius*, 380 U.S. 528.

voting in non-federal elections, and it is ripe for decision by the Court now. The relevant legislative findings and declaration contained in Section 10(a) of the Voting Rights Act of 1965 are applicable to this suit, and may be noticed by this Court, albeit the lower court did not consider them. Cf. *Hines* v. *Davidowitz*, 312 U.S. 52, 60. No purpose would be served by postponing decision here to await the outcome of a suit originated by the United States. Indeed, to do so would thwart the end that Congress sought to achieve. Congress was aware that this case was pending, and one of the principal arguments made in favor of a congressional declaration that poll taxes were unconstitutional, rather than an outright prohibition, was the belief that the former approach would avert the likelihood of a remand by this Court. See 111 Cong. Rec. 9583, 9587, 9727, 9733 (daily ed.).

Since this litigation squarely presents an important question bearing upon the fundamental right to vote and there are in our view no compelling considerations of policy which call for a deferral of decision, we undertake to set forth the government's views.

STATEMENT

A. PROCEEDINGS BELOW

On March 17, 1964, appellants, four United States citizens, residents of Virginia, filed a complaint in the United States District Court for the Eastern District of Virginia on behalf of themselves and others similarly situated. They sought leave of the

court to prosecute the action *in forma pauperis* pursuant to 28 U.S.C. 1915 (R. 10–14); permission to do so was granted (R. 1). The defendants (appellees here) were officials responsible for the administration and enforcement of the State's laws relating to poll taxes. The complaint alleged that Virginia's constitutional and statutory provisions [3] requiring the payment of a poll tax as a precondition to registering to vote and to voting in State and local elections "discriminate against plaintiffs and other similarly situated, depriving them of their rights under the equal protection and due process clauses of the Fourteenth Amendment * * *" (R. 6). It further alleged that appellants and members of their class were unable to pay the poll tax and were thus prevented from registering to vote, and from voting, in non-federal elections solely because of their poverty. The complaint asked for declaratory and injunctive relief. The jurisdiction of the district court was invoked under the Fourteenth Amendment and 28 U.S.C. 1343 (3), 2201 and 2202. The right to maintain the suit was asserted under 42 U.S.C. 1983 (R. 2).

On April 13, 1964, appellees filed a motion to dismiss, asserting, among other things, that the complaint failed to state a claim upon which relief could be granted (R. 17–19). On May 26, 1964, appellants moved for leave to amend their complaint in order to challenge the Virginia constitutional and statutory provisions which disqualify "paupers" from register-

[3] These provisions are described in detail, *infra*, pp. 9–13.

ing to vote and from voting (R. 22–23).[4] This motion was subsequently granted (R. 23–24).

On October 21, 1964, a hearing was held before a statutory court of three judges convened in accordance with the prayer in the complaint (R. 6, 26). During the course of the hearing, counsel for the State acknowledged that appellees would be subject to challenge as "paupers" under Virginia law (R. 29–30). On November 10, 1964, the court issued a *per curiam* opinion holding that the constitutionality of the challenged provisions of Virginia law requiring payment of a poll tax as a precondition to registering to vote and to voting in State and local elections was not open to question in view of the decision of this Court in *Breedlove* v. *Suttles,* 302 U.S. 277 (R. 32–33). With regard to the "pauper" disqualification, the court noted that there had been no showing that either appellants or members of their class had been prevented from voting on that ground, and concluded that "an expression by us upon the meaning and implications of that term would be entirely academic and without place here" (R. 33). The court accordingly entered an order dismissing the complaint (R. 34).

B. THE OPERATION OF THE VIRGINIA POLL TAX

1. ORIGIN—THE VIRGINIA CONSTITUTIONAL CONVENTION OF 1901–1902

As this Court has noted (*Harman* v. *Forssenius,* 380 U.S. 528, 543), the original purpose of the Vir-

[4] This disqualification applies to both federal and State elections. Va. Const. § 23; 24 Va. Code § 18.

ginia poll tax requirement was to disfranchise Negroes. Under the Virginia Constitution in force between 1870 and 1902, all male citizens twenty-one years of age and older (except insane persons, persons convicted of disqualifying crimes, and persons who had violated their oaths of office by participating with the Confederacy in the Civil War) who satisfied residency requirements were eligible to register and to vote,[5] and during this period substantial numbers of Negroes exercised the franchise in Virginia.[6] A constitutional convention was convened in 1901, primarily to explore ways to disfranchise the Negro. The opening speech by the president of the convention expressed this dominant theme:

> [O]ur people have no prejudice or animosity against members of the colored race, but [we] believe * * * that the dominant party in Congress not only committed a stupendous blunder, but a crime against civilization and Christianity when, against the advice of their wisest leaders, they required the people of Virginia and the South * * * to submit to universal negro suffrage. (Applause.) [*Report of the Proceedings of the Constitutional Convention of Virginia,* p. 20.]

In a similar vein, it was stated:

> The chief purpose of this convention is to amend the suffrage clause of the existing Constitution. It does not require much prescience to foretell that the alterations which we shall

[5] See *The Federal and State Constitutions, Colonial Charters and Other Organic Laws*, Vol. 7, H. Doc. No. 357, 59th Cong., 2d Sess., pp. 3875–3876.

[6] See McDanel, *Virginia Constitutional Convention of 1901–1902* (1928), pp. 25–34.

> make will not apply to "all persons and classes without distinctions." We were sent here to make distinctions. We expect to make distinctions. We will make distinctions. [*Proceedings,* p. 14; see also *id.,* p. 290.]

Both suffrage plans submitted to the convention contained a poll tax provision,[7] avowedly to eliminate Negro voting. Thus, the committee report accompanying one of these plans stated:

> It will not do away with the negro as a voter altogether, but it will have the effect of keeping numbers of the most unworthy and trifling of that race from the polls. I do not know of anything better in view of the fifteenth amendment. [*Proceedings,* p. 604.]

And, while there was some feeling that more was needed than a poll tax to accomplish the disfranchisement of the Negro, it was generally agreed that a poll tax was a necessary part of any effective suffrage plan (see, *e.g., Proceedings,* pp. 2961–2962). Several delegates thought that the poll tax should not be linked with voting, but should be used to force Negroes to pay a greater share of the costs of public education. An overwhelming majority of the delegates refused to divorce the tax from the franchise. Recognizing that revenue-raising and Negro disfranchisement were inconsistent objectives (see, *e.g., Proceedings,* pp. 2863, 2870), and deeming the latter paramount, the Committee of Elections decided that the tax should not be legally enforceable during the

[7] A poll tax had first been adopted in Virginia by constitutional amendment in 1876. This provision was also aimed at Negroes, but it proved too great a source of fraud (through block purchases of votes), and was repealed in 1882. See McDanel, *supra,* at 6.

period when non-payment would result in disfranchisement—*i.e.*, for three years. Payment during this period had to be completely voluntary, because if Negroes were compelled by process of law to pay poll taxes, they would do so and thereby qualify to vote. An attempt to amend this proposal was soundly defeated, and a poll tax plan specifically designed to disfranchise the maximum number of Negroes and the minimum number of whites was approved by the convention. The poll tax provisions of the Virginia Constitution of 1902 remain in effect today; together with their implementing legislation, they are the subject of this case. We describe the salient features of the Virginia poll tax system in the next section.

2. THE STRUCTURE OF THE POLL TAX SYSTEM IN VIRGINIA

Section 173 of the Virginia Constitution directs the general assembly to levy an annual poll tax of $1.50[8] on every resident of the State twenty-one years of age and over, except persons pensioned by the State for military services. One dollar of the tax is to be applied by State authorities "exclusively in aid of the public free schools," and the remainder is to be returned to the counties for general purposes. Section 18 of the Constitution prescribes the following preconditions for voting in Virginia: (1) citizenship; (2) age twenty-one and over; (3) specified periods of resi-

[8] Since all assessable poll taxes for the three preceding years must be paid as a precondition to registering to vote and to voting, the total tax due from persons who are liable for the tax for the three preceding years but who have not previously paid is approximately $4.75 (including required interest; see 58 Va. Code §§ 963–964).

dence in the State, county and precinct; (4) registration; and (5) payment of poll taxes. Under Section 20, a person offering to register to vote must have "personally"[9] paid all State poll taxes assessed or assessable against him for the three years preceding the year in which he applies for registration.[10]

The poll tax must be paid at least six months prior to the election in which the voter seeks to vote (Va. Const. § 21). General elections for State, county, and some—but not all—city offices are held in November (24 Va. Code §§ 136, 160–168). Thus, instead of a single deadline for payment of poll taxes with respect to voting in all elections, there are different deadlines for different elections. For example, in order for an otherwise qualified resident of Richmond to vote for the Mayor of Richmond, he must pay his poll taxes by early January of the year of the election. On the other hand, if he is interested in voting only for Governor of the State, and if he is aware of the applicable deadline, he need not pay poll taxes until early in May, six months before the November election. Additional complications arise with respect to special elections (see 24 Va. Code § 22, Appendix A, *infra*, p. 44).

[9] The requirement that the tax be "personally" paid is satisfied only if payment "reduces his estate or means"; *i.e.*, it may not be paid "out of the means of another" (*Tilton* v. *Herman*, 109 Va. 503, 507, 508, 64 S.E. 351, 353; *Stokes* v. *Hatchett*, 18 Va. Law Reg. 251, 257 (Lunenburg County Circuit Court)), and the physical act of payment must be performed by the prospective voter, a member of his household, or a blood relative.

[10] Registration in Virginia is permanent, rather than annual.

The State has established no procedure for assessing poll taxes. Exclusive responsibility for such assessment rests with the Commissioners of the Revenue for the counties and cities. There is no uniform assessment procedure.[11] Those counties and cities that levy personal property taxes generally assess poll taxes at the same time, and the State has accordingly supplied a standard form for the return of local personal property taxes which includes a place for the recipient to indicate whether he is liable for the poll tax (see 58 Va. Code § 836). If he indicates on the return that he is liable, he is then billed for the poll tax as part of his personal property tax bill.[12] As a result of the method of assessment, a large number of persons liable for the tax are not assessed.[13] For

[11] The most current and reliable information concerning poll tax assessment procedures in Virginia was provided by Judge C. H. Morrissett, who has been State Tax Commissioner since 1926, in deposition proceedings on May 28, 1965, in *Shepheard* v. *Harrison*, an original mandamus proceeding in the Supreme Court of Appeals of Virginia. The case has since been voluntarily dismissed. The pertinent parts of the deposition are printed in Appendix C, pp. 50–61, *infra*.

[12] Assessments for State and local taxes are made as of January 1 of the assessment year (58 Va. Code § 4). County treasurers are required to mail tax bills to individual taxpayers not later than December 1 (58 Va. Code § 960); and, as a matter of practice, bills are usually mailed during October and November. Ogden, *The Poll Tax in the South* (1958), pp. 65–66. Payments become delinquent on December 5 of the tax year (58 Va. Code § 963).

[13] The 1960 Census indicates that there were approximately 2,312,887 persons twenty-one years of age and over in Virginia in 1960. See *1960 Census of Population*, Vol. 1, Part 48 (Virginia), Table 16. But Judge Morrissett testified (App. C, *infra*, p. 55) that in 1960 only 1,769,067 persons were assessed for poll taxes. See also Ogden, *supra*, p. 65.

such persons, the State has provided only that they may take the initiative and request to be assessed:

> Any person assessable with capitation taxes for any year or years, who has not been assessed therewith * * * may apply to the commissioner of the revenue for the county or city in which he resides and have himself assessed with such omitted capitation taxes * * *. The commissioner of the revenue shall assess such person * * * and give such person a certificate of such assessment. Thereupon the treasurer of the county or city * * * shall receive from such person the capitation taxes set out in such certificate. * * * [58 Va. Code § 1163.] [14]

Apparently Virginia does not enforce payment of delinquent poll taxes [15] by any means other than disfranchisement of those who do not pay. Indeed, Section 22 of the Virginia Constitution provides that

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[14] In *Smith* v. *Bell*, 113 Va. 667, 75 S.E. 125, it had been held, prior to the adoption of this provision, that persons who had not been assessed in regular course but who had actually made timely payment of poll taxes could vote. The court relied on the fact that the relevant constitutional provisions—Va. Const. §§ 20 and 21—speak of poll taxes "assessed or assessable."

[15] In 1960, there were 2,312,887 persons in Virginia over the age of 21, almost all of whom were liable for poll taxes. See *supra*, n. 13, p. 11. If all persons liable for the tax had paid for that year only (without regard to payments for the two preceding years), the State would have realized gross revenues of approximately $3,500,000. In fact, poll taxes produced only $1,706,000 in the fiscal year 1960—a Presidential election year—and this figure includes delinquent payments made in fiscal 1960 for prior years. See *Detail of State Tax Collections in 1960*, U.S. Bureau of the Census, G–SF60—No. 4 at 26. Bureau of the Census publications indicate that poll tax payments in the years 1955–1964 were not made by the majority of persons presumptively liable for the tax.

collection of delinquent poll taxes for a particular year may not be enforced by legal proceedings until the tax for that year has become three years delinquent. See *Campbell* v. *Goode,* 172 Va. 463, 2 S.E. 2d 456. In other words, collection of poll taxes for a particular year may not be enforced until after payment for that year has ceased to be a precondition of being allowed to vote (see pp. 8–9, *supra*).

ARGUMENT

Introduction and summary

It is settled that the power of the States to fix voting qualifications for State elections is subject to review by this Court for compliance with the standards of the Fourteenth Amendment. *Carrington* v. *Rash,* 380 U.S. 89; *Louisiana* v. *United States,* 380 U.S. 145. And, since the franchise is a fundamental right implicit in the First Amendment's guarantees of political expression and in other provisions of the Constitution as well, a State voting qualification challenged on the ground that it is discriminatory or unreasonable is subject to careful scrutiny. It must be free of the taint of discrimination. And it will be upheld only if there is a clear relationship between the requirement imposed and the only legitimate end which the Legislature may pursue—that of perfecting the electoral process as a means to representative government.

In the court below, appellants' primary attack upon Virginia's poll tax requirement was that it invidiously discriminates against poor persons, many of whom can pay the tax only with hardship, or not at all. We

believe that the challenged statutes are invalid on this ground. However, we also believe that there is a more fundamental issue presented—an issue framed in the complaint and preserved at every stage of the proceeding, although it has not been given primary emphasis in the proceedings to date.

That issue (to which our entire brief is devoted) [16] is whether *any* tax levied on voting, and carrying the sanction of disfranchisement for non-payment, is constitutionally permissible. We urge that it is not; that for all otherwise qualified voters (and not only those among them who are at the extreme of impoverishment) taxation on voting limits a fundamental right impermissibly; and that this is so because such taxation is wholly unnecessary to advance any legitimate State interest in fixing voting qualifications or otherwise regulating the electoral process. In our view, this basic vice of the poll tax system cannot be cured—as could, perhaps, a law that merely discriminated against poor persons—by exempting indigents from the burdens of the law. Nor would it be cured by reducing the amount of the tax assessed, or by eliminating the burdensome and rather treacherous procedures connected with its payment. The poll tax is invalid, we submit, not merely in its incidence and in the details of its administration, but in its conception; the principle of a tax on the right to vote is constitutionally indefensible.

[16] As indicated in the text, in our view this is the bedrock issue. In addition, it is evident that the issue of "equal protection" will be fully briefed by the parties.

Should the Court adopt the ground of decision urged here, a pressing constitutional issue—whether any manner or form of poll tax may be made a condition of the right to vote—will be definitively resolved without the necessity to re-examine *Breedlove* v. *Suttles,* 302 U.S. 277, and the cases following that decision. See *Butler* v. *Thompson,* 97 F. Supp. 17 (E.D. Va.), affirmed *per curiam,* 341 U.S. 937; *Pirtle* v. *Brown,* 118 F. 2d 218 (C.A. 6), certiorari denied, 314 U.S. 621; *Saunders* v. *Wilkins,* 152 F. 2d 235 (C.A. 4), certiorari denied, 328 U.S. 870. The only question actually discussed in the *Breedlove* opinion was whether the Fourteenth or Nineteenth Amendments forbade a State to exempt women from the poll tax. This Court, remarking that such a tax was bound to fall with unequal weight on different classes of the population, held that the State could constitutionally mitigate such inequalities. The Court implicitly rejected appellant's contention that the statute discriminated invidiously against poor persons merely because they (like women) might find it difficult to pay. But the ground we urge was neither argued to nor considered by the Court.

I. THE POWER OF THE STATES TO LIMIT THE FRANCHISE BY PRESCRIBING QUALIFICATIONS FOR VOTING IS CONFINED TO THE IMPOSITION OF REQUIREMENTS CLEARLY RELATED TO THE ACHIEVEMENTS OF REPRESENTATIVE GOVERNMENT

A. STATE VOTING QUALIFICATION LAWS MUST CONFORM TO THE STANDARDS OF THE FOURTEENTH AMENDMENT

The States have primary responsibility for assuring that the franchise is withheld from persons who are not likely to be responsible electors (see, *e.g.,* U.S.

Const., Art. I, § 2), and they have correspondingly broad and adequate powers to fix the qualifications of voters (*Lassiter* v. *Northampton Election Bd.*, 360 U.S. 45, 50). We emphasize these propositions, and that we have no quarrel with them. Thus, a State may [11] deny the franchise to nonresidents, to those who do not register to vote, to those who have been convicted of crimes, to minors, and to others who the State may reasonably conclude are unfit to participate in its electoral processes. See *Pope* v. *Williams*, 193 U.S. 621; *Mason* v. *Missouri*, 179 U.S. 328; *Davis* v. *Beason*, 133 U.S. 333. But State power over suffrage, as in other areas of primary State responsibility, may be exercised only within the limitations prescribed by the Federal Constitution. With respect to State and local elections such limitations are found in a number of constitutional provisions specifically related to the franchise (the Fifteenth and Nineteenth Amendments and Section 2 of the Fourteenth Amendment), and in the general provisions of Section 1 of the Fourteenth Amendment—the basis in this case for challenging the constitutionality of Virginia's poll tax requirements.

That the validity of State-imposed voting qualifications could be challenged not only under the Suffrage Amendments, but under the Due Process and Equal Protection Clauses of the Fourteenth Amendment as well, was not certain until this Court's deci-

[11] At least, where there is no history of invidious discrimination, which otherwise reasonable voting qualification measures might perpetuate. See Section 4 of the Voting Rights Act of 1965.

sions last Term in *Carrington* v. *Rash*, 380 U.S. 89, and *Louisiana* v. *United States*, 380 U.S. 145, although earlier decisions had clearly foreshadowed this result. See *Nixon* v. *Herndon*, 273 U.S. 536; *Nixon* v. *Condon*, 286 U.S. 73; *Breedlove* v. *Suttles*, 302 U.S. 277; *Schnell* v. *Davis*, 336 U.S. 933, affirming *per curiam* 81 F. Supp. 872, 876 (S.D. Ala.); *Lassiter* v. *Northampton Election Bd.*, 360 U.S. 45; *Reynolds* v. *Sims*, 377 U.S. 533, 554. In *Carrington*, a State statute excluding from the suffrage otherwise qualified resident members of the United States Armed Forces, unless they had acquired residence in the State prior to entering the service, was invalidated on the ground that the exclusion did not have a sufficient nexus with the aims of representative government and the function of the electoral process in achieving those aims. In *Lassiter*, *supra*, a State literacy test challenged on Fourteenth Amendment grounds (among others) was upheld by this Court on the express basis that such a test (at least, on its face) was related to the State's legitimate interest in an understanding electorate. Applying the *Lassiter* principle, the district court in *United States* v. *Louisiana*, 225 F. Supp. 353, 386 (E.D. La.), affirmed, 380 U.S. 145, held that a State-imposed requirement that a voter be able to read and interpret any provision of the State or Federal Constitution violated the Fourteenth Amendment, on the ground that it bore "no relation to reasonable voting requirements. * * * [T]here is just no correlation between an ability to interpret *any* section [many of the sections being exceedingly technical and complex] of the Louisi-

ana Constitution * * * and a legitimate State interest in an informed electorate." (*Ibid.;* emphasis in original.) This Court affirmed. *Louisiana* v. *United States, supra;* see, also, *Schnell* v. *Davis, supra.*

It is thus no longer open to doubt that the requirements of the Fourteenth Amendment are applicable to State laws prescribing qualifications for voting, and that such laws cannot withstand challenge under the Amendment if shown to lack sufficient relation or connection to a legitimate State concern.

B. BECAUSE THE RIGHT TO VOTE IS ONE OF THE FUNDAMENTAL PERSONAL LIBERTIES SECURED BY THE FOURTEENTH AMENDMENT AGAINST STATE ACTION, STATUTES LIMITING ITS EXERCISE SHOULD BE CLOSELY SCRUTINIZED

When a State abridges "fundamental personal rights and liberties * * * the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions." *Schneider* v. *State,* 308 U.S. 147, 161. "[E]ven though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose." *Shelton* v. *Tucker,* 364 U.S. 479, 488.

The franchise is of course a fundamental personal right and an essential attribute of citizenship. *Yick Wo* v. *Hopkins,* 118 U.S. 356, 370; *Reynolds* v. *Sims,* 377 U.S. 533, 554, 561–562. Its abridgment significantly encroaches on "fundamental personal liberties." Although the right to vote in State elections is nowhere expressly conferred in the Constitution,[18] it is implicit in a number of its provisions, including the First Amendment.

In its guarantees of free speech, assembly, and petition for redress of grievances, the First Amendment is a comprehensive charter of freedom of political expression. It embraces not only the rights explicitly enumerated, but additional rights, such as that of association for lawful objectives, necessary for their full exercise and enjoyment. See, *e.g., NAACP* v. *Alabama,* 357 U.S. 449; *NAACP* v. *Button,* 371 U.S. 415, 429–430. Voting is indisputably a form of political expression—no less a one than a petition to a State's legislature for a redress of political grievances, or association for lawful political objectives, or litigation by minority groups seeking equality of treatment. This Court in *Button* noted that "[g]roups which find themselves unable to achieve their objectives through the ballot frequently turn to the courts" (371 U.S. at 429), and held that the State could not bar them from the courts for those purposes. No more may

[18] In contrast, the right to vote in federal elections is expressly conferred in Art. I, § 2 of the Constitution (see *United States* v. *Classic,* 313 U.S. 299, 314–315; *Ex parte Yarbrough,* 110 U.S. 651, 663–665), although the States have primary responsibility to establish voting qualifications in federal as well as State elections. See pp. 15–16, *supra.*

the States obstruct the primary route for the achievement of political objectives: the ballot. This is not to say that the States are required to submit every question of government to the electorate for determination. But insofar as a State does make the electoral process the method of determining its fundamental political questions, such as who shall exercise the executive and legislative powers of government, it curtails political expression if it denies its citizens the right to vote. And for most people voting is virtually the only practical form of political expression. The average citizen does not make political speeches, join political clubs, or write letters to newspapers. He expresses himself, in the political arena, only by casting his ballot.

The express First Amendment freedoms of political expression are not meaningful without a free and fair electoral process. There is little point in going out on the stump if the persons one exhorts are disfranchised; or in joining a political party if people cannot express their adherence to the principles of the party by voting for its candidates; or in otherwise expressing oneself politically if the basic institution for effecting political change by persuasion and consent rather than force or intimidation—the free election—does not exist. Moreover, "restrictions upon the right to vote," like "restraints upon the dissemination of information," "interferences with political organizations," and "prohibition of peaceable assembly," constitute a type of State action "which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legisla-

tion." *United States* v. *Carolene* [illegible] *Co.*, 304 U.S. 144, 152–153, n. 4. This Court has suggested that such restrictions should, on that account, "be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment than are most other types of legislation" (*ibid.*). The ordinary political processes of the State cannot be relied upon as the exclusive means to correct unfairness or inequality in the franchise. A State legislature elected under a law that restricts or dilutes the franchise may have no incentive—indeed, it may have a strong disinclination—to repeal such a law and thereby broaden the franchise.

The right to vote is implicit in other provisions of the Constitution as well. Article I, Section 2 provides that the members of the House of Representatives shall be chosen by the "People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature."[19] Article IV, Section 4 provides that the "United States shall guarantee to every State in this Union a Republican Form of Government." The Fifteenth and Nineteenth Amendments abrogate the power of the States to deny the right to vote in State (as well as federal) elections to certain classes of citizens.[20] These provisions obviously contemplate representative State governments, in which legislative power resides in popu-

[19] The Seventeenth Amendment makes similar provision for the election of Senators.

[20] See also § 2 of the Fourteenth Amendment.

larly elected officials. They presuppose the right to vote as a basic civil right. Without popular suffrage in the State political systems, the Fifteenth and Nineteenth Amendments would be meaningless. Article I, Section 2 and the related provision of the Seventeenth Amendment would be rendered inoperative; it would be impossible to determine who may vote in congressional elections. And the Guarantee Clause would be violated. "By the Constitution, a republican form of government is guaranteed to every State in the Union, and the distinguishing feature of that form is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves." *In re Duncan,* 139 U.S. 449, 461. "All the States had governments when the Constitution was adopted. In all the people participated to some extent, through their representatives elected in the manner specially provided. * * * Thus we have unmistakable evidence of what was republican in form, within the meaning of that term as employed in the Constitution." *Minor* v. *Happersett,* 21 Wall. 162, 175–176; see, also, *Baker* v. *Carr,* 369 U.S. 186, 242–244 (concurring opinion).

Since the right to vote is implicitly guaranteed by the Constitution, it is within " 'the area of protected freedoms,' " where the States may not regulate " 'by means which sweep unnecessarily broadly.' " *Griswold* v. *Connecticut,* 381 U.S. 479, 485, quoting *NAACP* v. *Alabama,* 377 U.S. 288, 307; see, also, *Kent*

v. *Dulles*, 357 U.S. 116, 125–127, 129. So this Court has expressly held in a closely related context: "Undeniably the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as federal elections. * * * The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government." *Reynolds* v. *Sims*, 377 U.S. 533, 554–555; and see *Wesberry* v. *Sanders*, 376 U.S. 1, 17; *Yick Wo* v. *Hopkins*, 118 U.S. 356, 370. "Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." *Reynolds* v. *Sims*, *supra*, at 562. It is true that the Court in these cases was referring to the right to vote of persons qualified under State law to vote. See *Gray* v. *Sanders*, 372 U.S. 368, 380–381. But the practical effect of arbitrarily denying the franchise to some persons (or diluting their vote), and of arbitrarily disqualifying them from voting, is the same. Just as the States have primary responsibility for apportioning their legislatures, so they have primary responsibility for determining voting qualifications; but in neither case may this power be used to deny the essential conditions of representative government—elections open on equal terms to all who are fit to participate in this most basic of political processes.

II. TAXATION OF VOTING IS NOT A LEGITIMATE EXERCISE OF STATE POWER TO FIX VOTING QUALIFICATIONS

A. THE CONGRESSIONAL FINDINGS, SET FORTH IN THE VOTING RIGHTS ACT OF 1965, ARE ENTITLED TO WEIGHT

This Court does not bear the sole responsibility for enforcing the requirements of the Fourteenth Amendment; Congress, by virtue of Section 5 of the Amendment,[21] shares this responsibility. See, *e.g.*, 42 U.S.C. 1981; *Pollock* v. *Williams*, 322 U.S. 4; *Buchanan* v. *Warley*, 245 U.S. 60; *Baldwin* v. *Franks*, 120 U.S. 678, 699–701 (dissenting opinion). Moreover, "a declaration by a legislature concerning public conditions that by necessity and duty it must know, is entitled at least to great respect." *Block* v. *Hirsh*, 256 U.S. 135, 154; cf. *Atlanta Motel* v. *United States*, 379 U.S. 241, 252–253; *Katzenbach* v. *McClung*, 379 U.S. 294, 299–300, 303–304. In Section 10(a) of the Voting Rights Act of 1965 (79 Stat. 442) Congress, with evidence before it regarding the purpose and effects of the poll tax system in Virginia,[22] found that the requirement of the payment of a poll tax as a precondition to voting (1) "precludes persons of limited means from voting or imposes unreasonable financial hardship upon such persons as a precondition to their exercise of the franchise," (2) "does not bear a reasonable relationship to any legitimate State interest in the conduct of elections," and (3) "in some areas has the purpose or

[21] "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

[22] See, *e.g.*, S. Rep. No. 162, 89th Cong., 1st Sess., Part 3, p. 33; H. Rep. No. 439, 89th Cong, 1st Sess., pp. 20–21; 111 Cong. Rec. 7617, 9570, 9572–9573, 9689 (daily ed.).

effect of denying persons the right to vote because of race or color." On the basis of these findings, Congress has declared in the same section "that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition to voting."

For present purposes, finding (2)—the lack of a reasonable relationship between the poll tax and the State's legitimate interest in the conduct of elections—is the most pertinent. The basis of this finding is summarized in the House Report.[23] Findings similar to those contained in Section 10(a) had earlier been made by Congress in proposing the Twenty-fourth

[23] "* * * Nothing in the payment of a poll tax evidences one's 'qualification' to vote. A man with a million dollars in the bank cannot vote if he fails to pay the tax; a man who steals a couple of dollars to pay the tax has met this condition. A poll tax has nothing in common with true 'qualifications': Age (reflecting maturity of judgment); residency (reflecting knowledge of local conditions), etc. Once it is demonstrated that the poll tax cannot be justified as a qualification for voting fixed by the States under article I of the Constitution, good cause for this restriction on the right to vote is hard to find. No one seriously contends that it is a revenue measure. Forty-six States deem it unwise. * * * In their administration, no less than by their arbitrary restriction, these exactions lend themselves to notorious abuse. Some poll taxes must be paid in advance, by a specified date—or the right to vote lapses; cumulative charges have to be satisfied, perhaps pricing the vote out of the market for the indigent applicant. Surely, in the light of its recent expressions (see, *e.g.*, *Harman* v. *Forssenius*, October term, 1964 (decided Apr. 27, 1965)), the Supreme Court can be expected to recognize and strike down these arbitrary restrictions on the right to vote, particularly so when Congress has determined that their elimination is appropriate to the safeguard of the rights of citizens under the 14th and 15th amendments." H. Rep. No. 439, 89th Cong., 1st Sess., p. 22.

Amendment [24] (see n. 2, p. 3, *supra*); they were summarized by this Court in *Harman* v. *Forssenius*, 380 U.S. 528, where the Court found that Virginia had violated the Amendment by requiring a certificate of residence to be filed in lieu of poll taxes in federal elections (380 U.S. at 539–540):

> Even though in 1962 only five States retained the poll tax as a voting requirement, Congress reflected widespread national concern with the characteristics of the tax. Disenchantment with the poll tax was many-faceted. One of the basic objections to the poll tax was that it exacted a price for the privilege of exercising the franchise. Congressional hearings and debates indicate a general repugnance to the disenfranchisement of the poor occasioned by failure to pay the tax. * * * Another objection to the poll tax raised in the congressional hearings was that the tax usually had to be paid long before the election—at a time when political

[24] To be sure, the Twenty-fourth Amendment is applicable only to federal elections. No inference can be drawn from this limitation, however, that Congress believed that poll taxes were any less invidious as a precondition to voting in State elections. In enforcing the poll tax laws, the States had never differentiated between State and federal elections, and there was certainly no indication that the poll tax placed a lesser burden on the exercise of the State than the federal franchise. The Twenty-fourth Amendment was limited to federal elections as a matter of political compromise (House Report, *supra*, p. 23). Nor is there any basis to suppose that Congress or the ratifying States intended the Twenty-fourth Amendment to effect a silent repeal of the Fourteenth Amendment insofar as that Amendment might limit State power to tax the vote. Our study of the legislative history of the Twenty-fourth Amendment discloses no instance in which it was ever suggested that any such radical result was contemplated or might follow.

> campaigns were still quiescent—which tended to eliminate from the franchise a substantial number of voters who did not plan so far ahead. The poll tax was also attacked as a vehicle for fraud which could be manipulated by political machines by financing block payments of the tax. In addition, and of primary concern to many, the poll tax was viewed as a requirement adopted with an eye to the disenfranchisement of Negroes and applied in a discriminatory manner. * * *

The problem of the poll tax has been before the Congress for some years. Congress has studied it and concluded, with ample basis in fact and experience, that the poll tax is not a justifiable exercise of State power to establish voting qualifications.[25] Without going so far as to suggest that this judgment is binding upon the Court, we submit that it is entitled to great weight. As we show immediately below, the Court would in any event be required to reach the same conclusion independently.

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[25] It is true the Voting Rights Act does not, as such, outlaw poll taxes. But sound practical reasons dictated the alternative approach actually followed—a declaration of unconstitutionality coupled with a direction to the Attorney General to institute appropriate actions to enjoin State poll tax requirements. The Attorney General expressed concern that if Congress outlawed the poll tax, and this Court should later hold the Act of Congress to be unconstitutional, many people, relying on the Act and accordingly declining to pay their poll taxes, would find themselves unable to qualify to vote. See *Hearings Before Subcommittee No. 5 of the House Committee on the Judiciary on H.R. 6400*, 89th Cong., 1st Sess., Ser. 2, pp. 23, 107. The approach followed by Congress avoids that risk, while expressing its constitutional judgment as effectively as if it had enacted an express invalidation.

B. THE POLL TAX IS INVALID BECAUSE IT BEARS NO RELATIONSHIP TO THE STATE'S INTEREST IN REGULATING THE ELECTORAL PROCESS FOR THE PURPOSE OF PROMOTING REPRESENTATIVE GOVERNMENT

A poll tax is a license tax on voting. Anyone who wants to vote must pay the tax; anyone who does not want to vote—though technically he remains liable for the tax—need not pay it. The question is whether such a limitation on the franchise is constitutionally permissible. We think not. To be sure, the States have broad powers to regulate the franchise, but, since the right to vote is one of the fundamental personal liberties protected by the Constitution, those powers must be exercised precisely and circumspectly so as to limit the franchise no more than is clearly necessary to effectuate the State's legitimate and substantial interests. Taxing the vote, we demonstrate, is a method of limiting the franchise that falls far short of this standard, and is indeed so arbitrary a restraint on the exercise of a fundamental right as to offend elementary notions of due process of law.[26]

A State may deny the franchise to minors. Political responsibility is not to be expected of children, and though some children or teen-agers are more mature than some adults, the line must be drawn somewhere. The State may likewise disfranchise convicted criminals. Having disregarded the State's most basic laws, they may reasonably be deemed unfit to participate in the process for choosing the lawmakers and

[26] Needless to say, if a State wishes to impose a capitation tax for revenue-raising purposes, there can be no objection so long as it does not tie its levy to exercise of the franchise.

the law-enforcers. So, too, the State may deny the franchise to nonresidents, who typically lack a direct and substantial stake in the affairs of the State; and, in some circumstances at least, to illiterates, who may be thought inadequately equipped to understand the issues in an electoral contest. The State may also deny the vote to persons who fail to register in advance—because registration has been found to be an effective method of preventing electoral frauds, and also because it prevents persons who have no real interest in participating in the electoral process from casting an ill-considered ballot based on a last-minute decision to vote. And it was once thought (although we think the proposition no longer tenable; see p. 32, *infra*) that the vote could properly be limited to men of property,[27] on the theory that they were the most responsible element of the community. In all of these cases, there is (or was) at least an arguable relation between the measure limiting the franchise and the goal of representative government—government by officials elected by the State's responsible citizens. There is no such relation in the case of the poll tax.

At its inception, Virginia's poll tax had, as we have seen, only one purpose: to disfranchise the Negro (*Harman* v. *Forssenius*, 380 U.S. 528, 543; pp. 6–9, *supra*) in circumvention of the Fifteenth Amendment. Attempts to supply a different rationale are unconvincing, *ex post facto* rationalizations. It has been asserted that to condition the franchise on pay-

[27] The history of property qualifications for voting is comprehensively reviewed, Porter, *Suffrage in the United States* (1918) *passim*.

ment of a tax "limit[s] the right of suffrage to those who * * * [take] sufficient interest in the affairs of the State to qualify themselves to vote." *Campbell* v. *Goode*, 172 Va. 463, 466, 2 S.E. 2d 456, 457. This explanation is belied by the methods of assessment and collection (see pp. 10–12, *supra*). For those who are assessed for poll taxes along with personal property taxes, the poll tax is a (to most persons, negligible) $1.50 item buried in the general tax bill. As the leading student of the Virginia poll tax has noted, as a result of this method of assessment "some citizens pay the poll tax as an item of the general tax bill without realizing that they have done so and without bothering to qualify themselves further for voting." Ogden, *The Poll Tax in the South* (1958), p. 66. That a taxpayer may fail to deduct the amount of the poll tax from his bill is hardly evidence that he has "sufficient interest in the affairs of the State to qualify [himself] to vote." For those persons who are not assessed for poll taxes, the system is a series of pitfalls. Such a person receives no bill or other notice of when the tax is due. Yet to qualify to vote he must pay the tax six months in advance of the election—at a time, that is, when political activity is relatively quiescent and the actual election campaign has not begun.[28] This Court, as well as Congress (see n. 23, p. 25,

[28] Candidates for most major offices are required to declare their candidacies approximately thirty days prior to the May deadline for payment of poll taxes for voting in the November general election. 24 Va. Code §§ 349, 370. However, primary campaigns do not usually begin until *after* the May deadline for payment of poll taxes, and the actual campaign does not begin until long after.

supra), has recognized that the timing of the required payment places on a person who desires to vote the unreasonable burden of having to remember long before the election that he must take the initiative and pay his poll tax. *Harman* v. *Forssenius,* 380 U.S. 528, 539–540, 542; see pp. 26–27, *supra.* The burden is all the heavier since it is necessary to plan with respect to more than one election, falling on different days (see p. 10, *supra*). There is no single day for paying poll taxes to qualify for all forthcoming State and local elections. While the State has a legitimate concern with fostering an interested electorate, the poll tax system is too treacherous to provide a reliable means of separating out the uninterested. It "is not a test but a trap." *Louisiana* v. *United States,* 380 U.S. 145, 153.

In its practical impact, we have seen that the Virginia poll tax system imposes a negligible burden on the owner of personal property who is billed for poll taxes along with personal property taxes, and an unreasonable one on persons who, due to the vagaries of the assessment practices of the counties and cities, are not assessed for poll taxes at all. Such disparate treatment alone vitiates any contention that the poll tax is a method of limiting the electorate to those who are seriously interested in exercising the franchise. Nor can it be justified on the ground that the State may constitutionally limit the franchise to persons of property. In the first place, that is not the line drawn—except in a most fortuitous and haphazard manner—by the poll tax system. A person without property may still qualify to vote if he takes the initiative in paying his poll taxes, or if, though

not liable for any personal property tax, he indicates on his return that he is liable for poll tax and is billed for and pays that tax. A person of property may effectively be disfranchised if he lives in a county which levies no personal property tax and does not assess poll taxes. And while in some areas many persons are not assessed for poll taxes, there is some indication that in other areas an effort is made to assess everyone specially for such taxes. Ogden, *supra*, p. 66. In short, there is no rational pattern in the assessment of poll taxes.

In the second place, however it may have been viewed in an earlier era, restricting the franchise to the propertied or financially able can no longer be justified on the theory that there is a reliable and demonstrable relationship between the possession of monetary means and the attributes of responsible citizenship. "Diluting the weight of votes because of place of residence [within the State] impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discriminations based upon factors such as * * * economic status." *Reynolds v. Sims*, 377 U.S. 533, 566. "[A]ll who participate in the election are to have an equal vote * * * whatever their income * * *." *Gray* v. *Sanders*, 372 U.S. 368, 379. "Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests." *Reynolds* v. *Sims, supra*, at 562. To favor the property owner is to inject "economic interests" into the electoral process and make income a voting qualification, contrary to the decisions of this Court.

Even if Virginia were to amend its laws to provide a uniform assessment method for all persons, the poll tax still could not be defended as a *bona fide* method for separating interested from uninterested prospective voters. Payment of a sum of money—especially long before the election campaign begins—is not a reliable token of interest in the electoral process. To a person who is assessed $1.50 as part of a larger tax bill, the poll tax is, as we have seen, no evidence of interest in the electoral process. But to an impoverished person, of no property and no financial means, a special assessment of $1.50 could well deter exercise of the franchise. A system that bases voting qualification on the payment of money, even an amount which to the average person is nominal, has built into it inequalities which bear no relationship to the State's legitimate concern with fostering a responsible electorate. However the tax be measured, and whatever its amount, the inevitable tendency is to place unequal burdens on persons who may be equally responsible electors; as this Court has made clear, the time is past when income or property could reasonably be considered an index of civic responsibility. Nor would this vice be cured by exempting poor persons from the tax. To enforce such an exemption, it would be necessary to require evidence of poverty, and the furnishing of such evidence would itself constitute a burden on the exercise of the franchise. The short of it is that financial ability has no place in a test of voting eligibility; in our democratic society, it is irrelevant to a determination whether a person is fit to vote. The States, therefore, may not, consist-

ently with the Fourteenth Amendment, use any financial criterion—as is inherent in the poll tax—in their voting qualification requirements.[29]

Taxation as a method of voting qualification has additional infirmities. It is peculiarly susceptible to fraud. *Harman* v. *Forssenius, supra,* at 540; pp. 27, *supra.* A political machine can manipulate the electoral process by financing block payments of the poll tax. It is to minimize this danger, it has been argued, that the State must make the tax due so far in advance of the election.[30] But the result of so doing, as we have seen, is that many citizens lose the vote through inadvertence.

Not only is taxation an inherently ill-suited method for regulating the franchise in a manner consistent with the goals of representative government; superior methods are available and are widely used. The normal means of assuring that the franchise is confined to those who have demonstrated a responsible interest in its exercise is to require registration to vote. Under the registration system, the voter must formally express a desire to vote and undergo a registration procedure far less perfunctory than that of being

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[29] Assuming that limiting the franchise to taxpayers would be any less objectionable, this defense would not be open to the State here since it is plain that most persons who do not or cannot pay poll taxes pay other State taxes—*e.g.*, sales and other indirect taxes. And a person could pay his poll taxes and qualify to vote though he paid no other taxes.

[30] The requirement that poll taxes be paid far in advance of the election—a requirement common to the States of Virginia, Alabama, Mississippi, and Texas—arose in part from a desire to prevent block payments of poll taxes by corrupt politicians on the eve of the election. See Ogden, *supra*, at 44–52.

assessed an annual poll tax as part of a general tax bill. The procedure is sufficiently demanding to discourage the uninterested from qualifying to vote, without being "calculated * * * to lay springes for the citizen" (*Lassiter* v. *Northampton Election Bd.*, 360 U.S. 45, 54), or place unequal burdens on different classes, or inject irrelevant economic criteria. Virginia requires voter registration. It has not shown why additional proofs of voter interest are necessary, or how the poll tax system can fairly be said to provide such proofs.

The poll tax has also been defended (see references in *Harmon* v. *Forssenius, supra*, at 542, n. 21) on the ground that it provides a simpler method than annual registration for insuring that the voter is a *bona fide* resident of the State. The State has an interest in limiting the franchise to residents, and, therefore, in procedures that enable a reliable determination whether a prospective voter is a resident. But to determine residency, it is neither necessary nor appropriate to require payment of a sum of money. There is no relationship between paying a special tax on voting and proving residence, as this Court has recognized in expressly rejecting the contention that taxing the vote is a proper measure to insure "that the electorate is limited to bona fide residents." *Harman* v. *Forssenius,* 380 U.S. 528, 543. "[N]umerous devices [are available] to enforce valid residence requirements—such as registration, use of the criminal sanction, purging of registration lists, challenges and oaths, public scrutiny by candidates and other interested parties" (*ibid.*). None of them has the

same inherent inadequacies and inequities as the poll tax system. It may be somewhat easier to administer than some of the other methods, but a fundamental right may not be limited on the ground of "some remote administrative benefit to the State." *Id.* at 542, citing *Carrington* v. *Rash,* 380 U.S. 89, 96.

Finally, the poll tax system cannot be defended on the ground that it provides a legitimate method of raising money for public education or other lawful purposes.[31] The State itself does not regard the poll tax in this light. The poll tax was not adopted as a revenue measure;[32] the State's legal authority to collect the tax (otherwise than by disfranchisement) is severely limited, and in any event not exercised (see pp. 12–13, *supra*); and the revenue it produces is negligible.[33] Moreover, the fact that the State has a legitimate interest in raising revenue by taxation does not mean that it is justified in using disfranchisement as a method of tax collection. It is clear that a State

[31] Under Va. Const. § 173, $1.00 of the $1.50 poll tax is allocated to the public schools. The remaining $.50 is remitted to the counties for general purposes. See p. 9, *supra.*

[32] The Virginia Supreme Court of Appeals said in *Campbell* v. *Goode*, 172 Va. 463, 466, 2 S.E. 2d 456, 457, that the State's poll tax "was not intended primarily for the production of revenue."

[33] For example, in 1964, total poll tax revenues allocable to public education in Virginia comprised less than one half of one percent of the total revenues for public education for the school year 1963–1964. Total poll tax revenue for 1964 was $1,826,000, two-thirds of which was allocable to the public schools. *State Tax Collections in 1964*, U.S. Bureau of the Census, G–SF64–No. 3 at p. 12. Total revenues for public education for the school year 1963–1964 were $444,282,209. *Annual Report of the Superintendent of Public Instruction*, 1963–1964 at p. 236.

can raise all the revenue it needs without having to tax the vote—as witness the experience of the 46 States that levy no poll taxes. Since disfranchisement is not a necessary, usual, or appropriate method of tax collection, using it to raise revenue would present a clear case of abridging a fundamental right unenecessarily. See *Shelton* v. *Tucker,* 364 U.S. 479; p. 18, *supra.*

The same result would follow, we think, even if poll tax revenues were used to defray the costs of elections or of representative government generally. Again, the experience of the vast majority of the States makes clear that such a measure is not necessary to support the expenses of representative government. Moreover, democratic government benefits every citizen. Imposing a disproportionate share of its costs on those who exercise the basic right of citizenship—the franchise—would discriminate against the people who are discharging their public responsibilities and in favor of those who are not; discourage the exercise of the franchise generally; and thereby, we submit, unreasonably and therefore impermissibly abridge the right to vote. It is not a proper exercise of the taxing power to impose special charges on persons exercising their fundamental rights. *Murdock* v. *Pennsylvania,* 319 U.S. 105; pp. 39–40, *infra.*

C. IN THE LIGHT OF PRESENT KNOWLEDGE, THERE CAN BE NO BASIS FOR A CLAIM THAT THE POLL TAX DOES NOT LIMIT THE RIGHT TO VOTE

Before the Twenty-fourth Amendment abolished the poll tax as a requirement in federal elections, it was

not altogether clear how great an impact the system had on the franchise in the States where such taxes were imposed. But there was evidence that the impact was substantial. "Since such States as Florida, Tennessee, South Carolina, and Georgia have abolished * * * [the poll tax], several of these States have reported an increase in registration and voting. It is interesting to note that these five States which still require payment of a poll tax were among the seven States with the lowest voter participation in the 1960 presidential election." H. Rep. No. 1821, 87th Cong., 2d Sess., p. 3. The adoption of the Twenty-fourth Amendment has provided dramatic confirmation that the poll tax is indeed a substantial barrier to voting. Although the nationwide percentage of persons voting declined in the 1964 as compared with the 1960 Presidential election, it increased substantially in each of the five States which required poll taxes in 1960 but—as a result of the Twenty-fourth Amendment—not in 1964. We document this assertion in Appendix B, *infra*, pp. 47–49, and we submit, further, that our analysis of the practical workings of the Virginia poll tax (pp. 30–33, *supra*) demonstrates that the inherent effect of the system is to limit the franchise and that such effect is likely to be appreciable.

Although we have pointed to unmistakable evidence that poll taxes work a substantial deprivation of protected rights, statistical demonstration is actually quite unnecessary. A license by its very nature restricts the activity licensed, and abridges the right to engage in it. The poll tax laws are, as noted, earlier,

a licensing scheme. No one may vote who does not pay the tax. In *Staub* v. *City of Baxley*, 355 U.S. 313, a city ordinance required a permit to be obtained from city officials before anyone could solicit membership in any dues-paying organization. Appellant, an organizer for a labor union, was arrested for having solicited without a permit. She contended that the permit requirement was unconstitutional as a restraint on freedom of speech. This Court held that she was entitled to raise the constitutional question although she herself had not first applied for (and hence had not been denied) a permit under the challenged ordinance. She might in fact have been granted a permit without difficulty; but she could not be required to submit to a licensing procedure that did not measure up to constitutional standards.

Similarly, a person who refuses to pay poll taxes on the ground that the State is without power to impose such a condition on the right to vote need not show that he cannot afford to pay the tax or that he finds it otherwise impracticable or inconvenient to comply with the poll tax laws. The State may not, at least without demonstrating an exigent need, "impose a charge for the enjoyment of a right granted by the Federal Constitution" (*Murdock* v. *Pennsylvania*, 319 U.S. 105, 113)—even a charge that, to some persons, is purely nominal. For it is immaterial "that proof is lacking that these license taxes either separately or cumulatively have restricted or are likely to restrict petitioners' * * * activities. On their face they are a restriction of the free exercise of those freedoms which are protected by the First Amend-

ment." *Id.* at 114; see, also, *Jones* v. *Opelika*, 319 U.S. 103.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment below should be reversed.

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SEPTEMBER 1965.

APPENDIX A

Section 10 of the Voting Rights Act of 1965 (79 Stat. 442–443) provides in pertinent part:

> (a) The Congress finds that the requirement of the payment of a poll tax as a precondition to voting (i) precludes persons of limited means from voting or imposes unreasonable financial hardship upon such persons as a precondition to their exercise of the franchise, (ii) does not bear a reasonable relationship to any legitimate State interest in the conduct of elections, and (iii) in some areas has the purpose or effect of denying persons the right to vote because of race or color. Upon the basis of these findings, Congress declares that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition to voting.
>
> (b) In the exercise of the powers of Congress under section 5 of the fourteenth amendment and section 2 of the fifteenth amendment, the Attorney General is authorized and directed to institute forthwith in the name of the United States such actions, including actions against States or political subdivisions, for declaratory judgment or injunctive relief against the enforcement of any requirement of the payment of a poll tax as a precondition to voting, or substitute therefor enacted after November 1, 1964, as will be necessary to implement the declaration of subsection (a) and the purposes of this section.
>
> (c) The district courts of the United States shall have jurisdiction of such actions which shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States

Code and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

* * * * *

Sections 20, 21, 22, 35, and 38 of the Virginia Constitution, as amended, provide in pertinent part:

Section 20

Every citizen of the United States, having the qualifications of age and residence required in section eighteen, shall be entitled to register, provided * * * that he has personally paid * * * all State poll taxes legally assessed or assessable against him for the three years next preceding that in which he offers to register * * *.

Section 21

A person registered [to vote] * * * shall have the right to vote for all officers elective by the people * * * [provided that] he shall, as a prerequisite to the right to vote, personally pay, at least six months prior to the election, all State poll taxes assessed or assessable against him * * * during the three years next preceding that in which he offers to vote. * * *

Section 22

* * * The collection of the State poll tax assessed against anyone shall not be enforced by legal process until the same has become three years past due.

Section 35

No person shall vote at any legalized primary election for the nomination of any candidate for office unless he is at the time registered and qualified to vote at the next succeeding election.

Section 38

The treasurer of each county and city shall, at least five months before each regular election, file with the clerk of the circuit court of his county, or of the corporation court of his city, a list of all persons in his county or city who have paid not later than six months prior to such election, the State poll taxes required by this Constitution during the three years next preceding that in which such election is held; which list * * * shall state the white and colored persons separately, and shall be verified by the oath of the treasurer. The clerk, within ten days from the receipt of the list, shall make and certify a sufficient number of copies thereof, and shall deliver one copy for each voting place in his county or city, to the sheriff of the county or sergeant of the city, whose duty it shall be to post one copy, without delay, at each of the voting places * * *; the clerk shall * * * also cause the list to be published in such other manner as may be prescribed by law. * * *

Within thirty days after the list has been so posted, any person who shall have paid his capitation tax, but whose name is omitted from the certified list, may * * * apply to the circuit court of his county, or corporation court of his city, or to the judge thereof in vacation, to have the same corrected and his name entered thereon, which application the court or judge shall promptly hear and decide.

The clerk shall deliver, or cause to be delivered, with the poll books, at a reasonable time before every election, to one of the judges of election of each precinct of his county or city, a like certified copy of the list, which shall be conclusive evidence of the facts therein stated for the purpose of voting. * * *

Sections 17, 22, 67, 120, 124 and 367 of Title 24 (Elections) of the Virginia Code provide in pertinent part:

Section 17

Every citizen of the United States twenty-one years of age, who has been a resident of the State one year, of the county, city or town, six months, and of the precinct in which he offers to vote thirty days next preceding the election, in which he offers to vote, has been duly registered, and has paid his State poll taxes, as required by law, and is otherwise qualified, under the Constitution and laws of this State, shall be entitled to vote for members of the General Assembly and all officers elective by the people. * * *

Section 22

The qualifications of voters at any special election shall be such as are hereinbefore prescribed for voters at general election, but at any such special election, held before the second Tuesday in June in any year, any person shall be qualified to vote who was so qualified at the last preceding regular November election, or who is otherwise qualified to vote, and has personally paid, at least six months prior to the second Tuesday in June of that year, all State poll taxes assessed or assessable against him during the three years next preceding that in which such special election is held, and at any such special election, held on or after the second Tuesday in June in any year, any person shall be qualified to vote who is or was qualified to vote at the regular election held on the Tuesday after the first Monday in November of that year. The term "special election" as used in this section shall be deemed to include such elections as are held in pursuance of any special law, and also such as are held to fill a vacancy in any office, whether the same be filled by any qualified voters of the State, or of any county, city, magisterial district or ward.

Section 67

Each registrar shall register every citizen of the United States, of his election district, who shall apply to be registered at the time and in the manner required by law, who shall be twenty-one years of age at the next election, who has been a resident of the State one year, of the county, city, or town six months, and of the precinct in which he offers to register thirty days next preceding the election, who, at least six months prior to the election, has paid to the proper officer all State poll taxes or assessed or assessable against him for three years next preceding such election, or if he come of age at such time that no poll taxes shall be assessable against him for the year preceding the year in which he offers to register, has paid one dollar and fifty cents in satisfaction of the first year's poll tax assessable against him.

Section 120

The treasurer of each county and city shall, at least five months before the second Tuesday in June in each year in which a regular June election is to be held in such county or city, and at least one hundred and fifty-eight days before each regular election in November, file with the clerk of the circuit court of his county or the corporation court of his city a list of all persons in his county or city who have paid not later than six months prior to each of such dates the State poll taxes required by the Constitution of this State during three years next preceding that in which such election is to be held, which list shall state the white and colored persons separately, and shall be verified by the oath of the treasurer. * * *

Section 124

The clerk shall deliver, or cause to be delivered, with the poll books at a reasonable time before every election, to one of the judges of election of each precinct in his county or city, a like certified copy of the list, which shall be

conclusive evidence of the facts therein stated for the purpose of voting. * * *

Section 367

All persons qualified to vote at the election for which the primary is held, and not disqualified by reasons of other requirements in the law of the party to which he belongs, may vote at the primary * * *.

APPENDIX B[1]

(Numbers in thousands)

COMPARATIVE VOTING STATISTICS—1960–1964

The nationwide percentage of persons of voting age voting in the 1964 presidential election declined 2 percent from the comparable percentage for the 1960 presidential election. On a state-by-state basis, the percentage of voting-age persons voting in the 1964 presidential election as compared with the 1960 election declined in 32 states, remained unchanged in 6 states, and increased in 12 states, as shown in the following table:

State	1960			1964			
	Voting Age Population	Total Votes Cast	Percent Voting Age Population Voting	Voting Age Population	Total Votes Cast	Percent Voting Age Population Voting	Percentage Change in Proportional Number of Votes Cast
Alabama	1,834	570	31	1,915	690	36	5
Alaska	134	61	45	138	67	49	4
Arizona	732	398	55	879	481	55	0
Arkansas	1,043	429	41	1,124	560	50	9
California	9,660	6,507	67	10,916	7,058	65	−2
Colorado	1,031	736	71	1,142	777	68	−3
Connecticut	1,891	1,223	76	1,698	1,219	71	−5
Delaware	267	197	73	283	201	72	−1
Florida	3,088	1,544	50	3,516	1,854	52	2
Georgia	2,410	733	30	2,636	1,130	44	14
Hawaii	360	185	51	395	207	52	1
Idaho	372	300	80	386	292	75	−5
Illinois	6,281	4,757	75	6,358	4,703	74	−1
Indiana	2,778	2,135	76	2,826	2,092	75	−1
Iowa	1,664	1,274	77	1,638	1,185	73	−4
Kansas	1,322	929	70	1,323	858	64	−6
Kentucky	1,898	1,124	59	1,976	1,046	52	−7
Louisiana	1,804	808	44	1,893	896	48	4
Maine	581	422	72	581	381	65	−7
Maryland	1,845	1,055	57	1,995	1,116	55	−2
Massachusetts	3,245	2,469	76	3,290	2,345	72	−4
Michigan	4,580	3,318	72	4,647	3,203	68	−4
Minnesota	2,001	1,542	77	2,024	1,554	77	0

[1] *Population of Voting Age and Votes Cast for President, 1964 and 1960*, U.S. Department of Commerce, Bureau of Census, Ser. P–23, No. 14, Table 1.

State	1960			1964			
	Voting Age Population	Total Votes Cast	Percent Voting Age Population Voting	Voting Age Population	Total Votes Cast	Percent Voting Age Population Voting	Percentage Change in Proportional Number of Votes Cast
Mississippi	1,171	298	25	1,243	409	32	7
Missouri	2,606	1,934	71	2,696	1,818	67	−4
Montana	389	278	71	399	279	69	−2
Nebraska	858	613	71	877	584	67	−4
Nevada	175	107	61	244	135	56	−5
New Hampshire	373	296	79	396	288	72	−7
New Jersey	3,861	2,773	72	4,147	2,847	68	−4
New Mexico	501	311	62	514	328	63	1
New York	10,881	7,291	68	11,330	7,166	63	−5
North Carolina	2,557	1,369	53	2,753	1,425	51	−2
North Dakota	355	278	78	358	258	72	−6
Ohio	5,839	4,162	71	5,960	3,969	66	−5
Oklahoma	1,416	903	63	1,493	932	63	0
Oregon	1,073	776	72	1,130	786	70	−2
Pennsylvania	7,100	5,007	70	7,080	4,823	68	−2
Rhode Island	540	406	75	568	390	68	−7
South Carolina	1,206	387	31	1,380	525	39	8
South Dakota	392	306	78	404	293	72	−6
Tennessee	2,003	1,053	51	2,239	1,144	51	0
Texas	5,534	2,312	41	5,922	2,627	44	3
Utah	468	375	81	522	401	76	−5
Vermont	231	167	73	240	163	67	−6
Virginia	2,313	771	34	2,541	1,042	41	7
Washington	1,718	1,242	72	1,759	1,258	72	0
West Virginia	1,083	838	77	1,053	792	75	−2
Wisconsin	2,354	1,729	73	2,391	1,692	70	−3
Wyoming	190	141	74	195	143	74	0

As the foregoing table shows, the percentage of persons of voting age who voted in the 1964 presidential election increased substantially over the percentage who voted in the 1960 election—despite the nationwide decline—in each of the five states—Alabama, Arkansas, Mississippi, Texas, and Virginia—that required payment of a poll tax as a prerequisite to voting in the 1960 and prior presidential elections, but which, under the Twenty-fourth Amendment, could not require poll tax payments in the 1964 presidential election. The percentage increases in these poll tax states were as follows:

State	1960			1964			
	Voting Age Population	Total Votes Cast	Percent Voting Age Population Voting	Voting Age Population	Total Votes Cast	Percent Voting Age Population Voting	Percentage Change in Proportional Number of Votes Cast
Alabama	1,834	570	31	1,915	690	36	5
Arkansas	1,043	429	41	1,124	560	50	9
Mississippi	1,171	298	25	1,243	409	32	7
Texas	5,834	2,312	41	5,922	2,627	44	3
Virginia	2,313	771	34	2,541	1,042	41	7

The increases in the percentages of voting age persons voting in the seven remaining states are as follows:

State	1960			1964			
	Voting Age Population	Total Votes Cast	Percent Voting Age Population Voting	Voting Age Population	Total Votes Cast	Percent Voting Age Population Voting	Percentage Change in Proportional Number of Votes Cast
Alaska	134	61	45	138	67	49	4
Florida	3,088	1,544	50	3,516	1,854	52	2
Georgia	2,410	733	30	2,636	1,139	44	14
Hawaii	360	185	51	395	207	52	1
Louisiana	1,804	808	44	1,893	896	48	4
New Mexico	501	311	62	514	328	63	1
South Carolina	1,266	387	31	1,380	525	39	8

The percentage increases in Alaska, Hawaii, and New Mexico are not especially significant in view of the small populations of these states. The highest percentage increase—14 percent in Georgia, which has no poll tax requirement—may be attributed largely to the abolition of the county-unit system between 1960 and 1964 (see *Gray* v. *Sanders*, 372 U.S. 368), which probably resulted in a far heavier urban vote in that State. For example, in Fulton County, Georgia, of which Atlanta is the seat, the total number of votes cast increased 34%, from 109,743 to 166,745.

APPENDIX C

Testimony of Virginia State Tax Commissioner

Q. Judge Morrissett, for the record, state your full name.

A. Carlisle Havilock Morrissett.

Q. And your position with the State of Virginia?

A. State Tax Commissioner.

Q. How long have you held that position?

A. Since April, 1926. [P. 2.]

* * * * *

Q. Judge, who assesses that tax on behalf of the State?

A. The Commissioners of the Revenue of the Counties and Cities of the State.

Q. Are they doing it as agencies of your Department?

A. No, sir, not as agents of the Department of Taxation. They derive their powers directly from the Statutes.

Q. Whose duty is it to prescribe assessment methods for them?

A. The Department of Taxation prescribes forms for the assessment of the State Capitation Tax, the forms provide for the procedure; for example, the form for the return of tangible personal property for local taxation, the form prescribed by the State as the standard form, has always had on it a place in which a person would indicate whether or not he believed he was assessable with the State Capitation Tax. [Pp. 4–5.]

* * * * *

Q. Judge, has your Department, during your tenure of office, at any time made an examination to see how many people twenty-one years of age, residing in Virginia, were not being assessed with the Capitation Tax?

A. The Department of Taxation, so far as I know, has never made any study of that particular question.

Q. Is it mandatory that everyone twenty-one years of age who is domiciled in Virginia as of January 1st be assessed, with the two exceptions you mentioned?

A. Except those exempt by the Constitution or By-laws.

Q. Has the Department of Taxation ever issued any specific instructions to the Commissioners of Revenue relating to the assessment of a Capitation Tax so as to establish a uniform system of assessment?

A. No specific instructions have been issued to Commissioners of the Revenue on the ground that the law has been and is so plain as to speak for itself.

Q. Judge Morrissett, as Tax Commissioner of the State of Virginia, if you find that a local Commissioner of Revenue is not complying with the law concerning assessment of any tax, but specifically the Capitation Tax, do you have the power to direct him to carry out his duties in that respect?

A. I have the power to instruct him to carry out his State duties.

Q. Judge Morrissett, I do not know whether you have had an opportunity to examine the United States Census of Population for 1960 for the State of Virginia as being numbered PC(1)48D. Among statisticians they call it the "One Striper" since it has four white stripes in the upper left-hand corner. On page 48–315 that Census has indicated there were 2,304,288 persons in Virginia in 1960 that were twenty-one years of age or over, some of these people

including Military people who were in the Military but the total number added up to that figure. Have you had a chance to check the accuracy of that total?

A. I have examined the publication referred to and the figure of 2,304,288, as taken from Page 48–315 of the publication, is the figure given therein, but, Mr. Howell, on that point may I make this statement? The publication itself gives the bases on which these figures were compiled and the following explanatory paragraphs are taken from the above-mentioned publication:

"Detailed Characteristics, General, first paragraph, Page V"

"This report presents detailed categories and cross-classifications on the social and economic characteristics of the persons enumerated in the Eighteenth Decennial Census of Population, taken as of April 1, 1960. *All of these statistics are based on a 25-percent sample of the population.* The report contains data on the following subjects: Farm or nonfarm residence, color or race, nativity and parentage, place of birth, country of origin of the foreign stock, residence in 1955, school enrollment, level and type of school, years of school completed, veteran status of civilian males, marital status, whether married more than once, household relationship and unrelated individuals by type, persons in group quarters, families and subfamilies, number of own children, number of children ever born, employment status, hours worked, weeks worked in 1959, year last worked, occupation, industry, class of worker, earnings in 1959, income in 1959, place of work, and means of transportation to work."

A. (continuing) Now that is not very relevant, but this is:

> *"Information on age, sex, race, relationship to head of household, and marital status was collected on a complete-count basis, but the data for these five items shown in this report are based only on persons in the sample."* (Underscoring supplied.)

A. (continuing) Now this is the pertinent relationship. Now the first pertinent point was that all of these statistics are based on the 25-percent sample of the population.

Q. Judge, I don't want to interrupt you but do you mean that the statistics for the City of Richmond or Norfolk are based on 25%?

A. Only what is stated here, "Information on age, sex, race, relationship to head of household, and marital status was collected on a complete-count basis, but the data for these five items shown in this report are based only on persons in the sample." There is one other point to be brought out here and that is about persons in the Armed Forces. This is in the third and fourth paragraphs, Page VII:

> "Persons in the Armed Forces quartered on military installations were enumerated as residents of the States, counties, and minor civil divisions in which their installations were located. Members of their families were enumerated where they actually resided. As in 1950, college students were considered residents of the communities in which they were residing while attending college. The crews of vessels of the U.S. Navy and of the U.S. Merchant Marine in harbors of the United States were counted as part of the population of the ports in which their vessels were berthed on April 1, 1960. Inmates of institutions, who ordinarily live there for long periods of time, were counted as inhabitants of the place in which the institution was located, whereas patients in general hospitals, who ordinarily re-

main for short periods of time, were counted at, or allocated to, their homes. Persons without a usual place of residence were counted where they were enumerated.

"Persons staying overnight at a mission, flophouse, jail, detention center, reception and diagnostic center, or other similar place on a specified night (for example, April 8 in some areas) were enumerated on that night as residents of that place."

By Mr. HOWELL:

Q. Are you familiar with the fact that a school census is taken in every political subdivision in the State of Virginia every five years, according to the law?

A. That is the law of the State.

Q. Have you ever requested, as Commissioner of the Revenue, that the takers of that census put an extra column in order to ascertain the number of people residing in Virginia who are twenty-one years of age or older?

A. The school census, as I understand it, are not taken by Commissioners of the Revenue but by enumerators appointed by the local School Board or the Superintendent.

Q. Has anything ever been done by the Department of Taxation to determine from year to year the number of people that are twenty-one years of age or over in order to check on whether or not the mandatory law of assessment is being complied with?

A. Nothing has ever been done by the Department of Taxation as to checking into the matter that has been mentioned.

Q. Judge Morrissett, have you had an opportunity to check Page 16, Table 13 of the Report of your Department to the Governor of Virginia for the fiscal year ending June 30, 1961?

A. I have.

Q. And having heretofore suggested, through a certain court pleading, that this report contain the assessment of Capitation Taxes for the year 1960, could you tell us if this report does contain the Capitation Tax assessed for the year 1960?

A. It does.

Q. And I notice that on Page 16, Table 13, is indicates that $2,653,601.00 was the total assessment, exclusive of penalties and interest, that was made in Virginia for the year 1960; have you had an opportunity to check that for accuracy?

A. The figures taken from the Annual Report of the Department of Taxation for the fiscal year ending June 30, 1961 are correct. The arithmetical computation is correct.

Q. That is, we can determine the number of people actually assessed the Capitation Tax by dividing that sum by $1.50?

A. That is true.

Q. The quotient arrived at is 1,769,067 people?

A. That is correct.

Q. And the difference between the number of people assessed and the total population assigned to Virginia for persons twenty-one years of age or over subject to such imperfections as may be established in the census report would indicate a difference of 535,221 people? Before you explain, is that a correct subtraction according to your computation?

A. The figure of 535,221 cannot be admitted because—or that inference cannot be correctly drawn, in my opinion, because of the manner in which the census was taken, because of persons in the Armed Forces being exempt from the State Capitation tax and because of the other exemptions in the law. [Pp. 6–13.]

* * * * *

Q. You, yourself, have no knowledge of how many people twenty-one years of age or over are actually subject to the mandatory assessment?

A. In my opinion no accurate figure can be given by anyone.

Q. Have you ever asked the Bureau of Population at the University of Virginia, which is a State Agency, to determine that?

A. I have never requested them. I am sure that the Bureau of Census has done its best to compile accurate statistics but there are infirmities in them, as we have pointed out.

Q. You have no reason to believe that the census involves as much as half a million people, do you?

A. There are undoubtedly some people who are not being assessed with the State capitation tax.

Q. Who should be?

A. To make a statement to the contrary would not be reasonable. We all know that some people are not being assessed but it is also true that complete coverage would be quite beyond human accomplishment.

Q. But nothing is being done to actually obtain a head count of those people twenty-one years of age or over in Virginia?

A. Not by the Department of Taxation.

Recross examination by Mr. HARRIS:

Q. In that connection, Judge, what means, as far as you know, are being used by the Commissioners of Revenue in the cities and counties of this State to obtain the names of all of those persons who are required by the Constitutional statutory provisions of this State, considering those exempted, to be assessed with the State capitation tax?

Mr. HOWELL. I object because the Judge said he never put out any uniform regulations and, secondly, we are suing some 130 Commissioners and just to

give one blanket observation would not be relevant to any particular one.

By Mr. HARRIS:

Q. Subject to Mr. Howell's objection, and if you know, and have information in regard to the question I have asked, of your own knowledge would you please answer it?

A. The answer, Mr. Harris, is contained on Page 3 of the letter of January 6, 1964 to Mr. Howell, reading as follows——

Mr. HOWELL. This is of your own personal knowledge, is that right?

A. I would say yes. "Commissioners of the revenue, in ascertaining the names and addresses of persons assessable with a State capitation tax, rely upon the tangible personal property returns (which also make provision for the State capitation tax); upon names assessed for the preceding year; upon city directories in various instances, and upon any other source of information available."

By Mr. HARRIS:

Q. Do you know of any other sources of information available besides those you have already mentioned that they use, in fact?

A. Well, one other source would be the filing of State income tax returns. That would be a very good source.

Q. Do you know whether or not they would use lists of persons who have bought other types of licenses or have bought licenses which are considered to be taxable licenses, in a sense, like hunting and fishing and almost any other kind you can think of?

A. I would suppose an alert Commissioner of Revenue would do that but I have no personal knowledge of that particular point.

Q. But you do have personal knowledge as to everything else you have mentioned in this connection?

A. I am sure the statement read is correct. [Pp. 40-43.]

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Q. I hate to be going back and forth but it becomes necessary. Judge, I want to limit my redirect to this business of city directories. What will a city directory tell a Commissioner of Revenue about who is twenty-one years of age or older?

A. To my personal knowledge a great many persons under the age of twenty-one have been assessed with the State capitation tax whose names have been received by the Commissioners of Revenue, or derived, from city directories or income tax returns.

Q. Do you know a single Commissioner of Revenue who picks up every name in a city directory and assesses them?

A. Well, I could not say I know of any single Commissioner of the Revenue who will go through the City directory and compare the names there with the names on the assessment roll.

Q. You don't know of anyone?

A. I say there can be none except in a small community because in a city the size of Norfolk or the size of Richmond, the time consumed in making such a comparison would be out of all proportion to the results achieved.

Q. And in most small communities Mr. Hill doesn't find it worthwhile to prepare a city directory so we had just better eliminate city directories as being a real source of material for reference?

A. It is a material source. I do not say that every Commissioner of the Revenue uses a city directory but I say that city directories in various instances——

Q. Do you know a specific instance? We are in a

court of law; if you do, I want to have the benefit of it. I think that would be helpful so as to show a variation.

A. On a question of this kind I can only give you——

Q. I am not talking about the letter.

A. The information has come to me from Commissioners of the Revenue themselves. You see, I cannot personally swear that I have gone to a Commissioner's office and verified his use of a directory.

Q. Do you know of a single locality whose Commissioner has even stated to you that he uses the city directory to send out his capitation tax assessments?

A. It is my impression that it is done in the City of Richmond.

Q. But I thought you said the City of Richmond is too big?

A. I don't say that any Commissioner of the Revenue will compare the names in a city directory with the names of people on the capitation tax roll. What I was trying to say was that a Commissioner of Revenue in a large city would find it unprofitable to attempt to compare the names in a city directory with the names on the capitation tax assessment roll for the reason that the time required and the cost of such would be unjustifiable.

Q. Judge, let me ask you this; what specific use, if he is not going to use it to compare and is not going to send a capitation tax assessment to everybody in the city directory, I want to find out the real intent of your testimony; what use would he make of the city directory in the City of Richmond for assessing capitation taxes? Is any realistic use made of it?

A. Well, I am sorry, I am not a Commissioner of the Revenue.

Q. I appreciate that. I don't want you to testify to it if you don't know.

A. I do not make the statement that the city directory is used in a comprehensive way. I believe that is one of the sources of information.

Q. I understand, but you, yourself, have no personal knowledge of how the Commissioners use it, if at all? You have a general impression that they may refer to it?

A. I have never seen a Commissioner of the Revenue personally use a city directory for any purpose.

Q. You say they rely on tangible personal property returns, and I agree with that, and you say if they ever assess you once they will assess you for the rest of time, and I agree with you in that respect. Now in all probability a person who didn't own any tangible personal property, didn't report it, probably would never be assessed with a capitation tax, would he?

A. If that person files an income tax return he would be exposed to assessment.

Q. But if he didn't file an income tax return and didn't have tangible personal property or didn't report it, he or she may not receive an assessment for capitation tax?

A. May not receive it.

Recross examination by Mr. HARRIS:

Q. In connection with the personal property tax, is it, as far as you know, Judge, the practice of the treasurers in collecting the personal property tax to also attempt at the same time to collect any delinquent capitation tax for the same person that was assessed the personal property tax.

A. Well, that point, I think, is mentioned in the letter, too. Your point is what happens——

Q. No, I will rephrase the question. My question is, as far as you know do the local treasurers, when collecting delinquent personal property taxes, make

any attempt at the same time to collect any delinquent capitation tax that might exist for the same person against whom they are trying to collect the personal property tax?

A. I should say, to the extent that the capitation tax and the tangible personal property tax appear on the same tax bill, that the treasurer will send the tax bill containing both items. We all realize that the treasurer cannot resort to legal process for the collection of the State capitation tax, although he can resort to legal process to collect the tangible personal property tax. [Pp. 44–49.]

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